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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. R-2095

13 JOE MUNOZ
14 5630 Temple City Boulevard, Apt. L
Temple City, California 91780

A C C U S A T I O N

15 Respiratory Care Practitioner License No. 14010

16 Respondent.

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18 Complainant alleges:

19 PARTIES

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Respiratory Care Board of California (Board),
22 Department of Consumer Affairs.

23 2. On or about January 18, 1991, the Board issued Respiratory Care
24 Practitioner License Number 14010 to Joe Munoz (Respondent). This license was in full force
25 and effect at all times relevant to the charges brought herein and will expire on August 31, 2008,
26 unless renewed.

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4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3750 of the Code states:

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8. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.”

9. Section 492 of the Code states:

“Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.”

COST RECOVERY

10. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

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11. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

12. Section 3753.1, subdivision (a) of the Code states:

"An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation."

CONTROLLED SUBSTANCE

13. Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety Code Section 11055.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

14. Respondent is subject to disciplinary action under sections 3750, subdivision (d) and 3752 of the Code, in that he was convicted of a crime substantially related to the qualifications, functions or duties of a respiratory care practitioner. The circumstances are as follows:

A. On or about September 2, 2004, Los Angeles County Deputy Sheriffs went to Respondent's residence regarding a probation search. The deputies observed a clear plastic baggie containing a clear rock-like substance resembling methamphetamine and a clear glass pipe on top of a desk located in Respondent's garage. When Respondent was asked who had access to the garage and desk, he admitted, "I have been using for the last six months recreationally and that stuff is mine." Respondent was arrested for possession of a controlled substance and possession of drug paraphernalia.

B. On or about September 15, 2004, in Los Angeles County Superior Court Complaint No. 4PM07315, Respondent was charged with possession of the controlled substance methamphetamine, in violation of Health and Safety Code section 11377(a), a misdemeanor (Count 1), and possession of a smoking device, in violation of Health and

1 Safety Code section 11364, a misdemeanor (Count 2).

2 C. On or about October 13, 2004, Respondent was convicted pursuant to a
3 plea of guilty to possession of the controlled substance methamphetamine (Count 1) and
4 possession of a smoking device (Count 2). Proceedings were suspended, entry of
5 judgment was deferred, and Respondent was placed on diversion for two years. He was
6 ordered to pay a diversion restitution fee of \$150.00, a court security assessment of
7 \$20.00, and an administrative fee of \$100.00. He was also ordered not to use or possess
8 any marijuana, narcotic, controlled substance or paraphernalia.

9 D. On or about April 13, 2005, a diversion progress report hearing was held.
10 Deferred entry of judgment was terminated and criminal proceedings were reinstated.
11 Respondent was convicted of Counts 1 and 2. He was ordered to pay a fine to the court.

12 E. On or about April 22, 2005, a Proposition 36 eligibility determination
13 hearing was held. Probation was reinstated and modified. As to Counts 1 and 2, the
14 sentence was suspended and Respondent was placed on probation for one year. He was
15 ordered to complete the Proposition 36 drug treatment program, pay fees and charges of
16 \$320.00, and a restitution fine of \$100.00. He was also ordered to register as a narcotics
17 offender.

18 SECOND CAUSE FOR DISCIPLINE

19 (Possession of a Controlled Substance)

20 15. Respondent is subject to disciplinary action under section 3750.5,
21 subdivision (a) of the Code in that he possessed the controlled substance methamphetamine. The
22 facts and circumstances set forth in Paragraph 14 of this Accusation are incorporated herein by
23 reference.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking or suspending Respiratory Care Practitioner License Number
5 14010 issued to Joe Munoz;

6 2. Ordering Joe Munoz to pay the Respiratory Care Board the costs of the
7 investigation and enforcement of this case, and if placed on probation, the costs of probation
8 monitoring; and

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: August 16, 2007

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13 Original signed by:
14 STEPHANIE NUNEZ
15 Executive Officer
16 Respiratory Care Board of California
17 Department of Consumer Affairs
18 State of California
19 Complainant
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